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*Attorneys for Defendants Tribal Court for the Ute Tribe of the Uintah and Ouray Reservation;  
and Honorable Smiley Arrowchis*

**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

HONORABLE CLAIR M. POULSON, in his  
official capacity as Judge of the Duchesne  
County Justice Court, and DEREK DALTON,

Plaintiffs,

v.

UTE INDIAN TRIBE OF THE UINTAH and  
OURAY RESERVATION; BUSINESS  
COMMITTEE FOR THE UTE TRIBE OF  
THE UINTAH and OURAY RESERVATION;  
TRIBAL COURT FOR THE UTE TRIBE OF  
THE UINTAH and OURAY  
RESERVATION; IRENE C. CUCH, in her  
official capacity as Chairman of the Business  
Committee for the Ute Tribe; RONALD J.  
WOPSOCK, in his official capacity as Vice-  
Chairman of the Business Committee for the  
Ute Tribe; FRANCES M. POOWEGUP, in her  
official capacity as a Member of the Business

**MOTION TO DISMISS THE AMENDED  
COMPLAINT UNDER FED. R. 12(b)(1),  
(2), (4) AND (5) BY DEFENDANTS  
TRIBAL COURT FOR THE UTE  
TRIBE OF THE UINTAH AND OURAY  
RESERVATION; AND HONORABLE  
SMILEY ARROWCHIS**

Committee for the Ute Tribe; STUART PIKE, SR., in his official capacity as a Member of the Business Committee for the Ute Tribe; RICHARD JENKS, JR., in his official capacity as a Member of the Business Committee for the Ute Tribe; PHILLIP CHIMBURAS, in his official capacity as a Member of the Business Committee for the Ute Tribe; HONORABLE SMILEY ARROWCHIS, in his official capacity as Chief Judge of the Ute Tribal Court; LYNDA KOZLOWICZ; EDSON GARDNER; KOZLOWICZ & GARDNER ADVOCATES, INC., a Ute Indian corporation; ATHENYA SWAIN; DEAN REED and JOHNNY SLIM, SR.,

Defendants.

Civil No. 2:12-cv-00497

Judge Bruce S. Jenkins

Magistrate Judge: Evelyn J. Furse

**ORAL ARGUMENT REQUESTED**

COMES NOW the Defendants Tribal Court for the Ute Tribe of the Uintah and Ouray Reservation and Honorable Smiley Arrowchis (collectively referred to herein as “Defendants”), through undersigned counsel, and move to dismiss the claims filed against them by Plaintiffs Honorable Clair M. Poulson and Derek Dalton for lack of a ripe case or controversy under Art. III of the U.S. Constitution, lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient process and insufficient service of process.

This Court lacks subject matter jurisdiction on grounds of (i) Indian tribal sovereign immunity; (ii) lack of federal question jurisdiction under 28 U.S.C. § 1331; and (iii) lack of diversity jurisdiction under 28 U.S.C. § 1332. To begin with, there is no waiver of tribal sovereign immunity; secondly, the Plaintiffs’ request for declaratory relief does not raise a federal question; and thirdly, the Defendants are not citizens of any state for purposes of diversity jurisdiction. Accordingly, because there is no Article III jurisdiction and no statutory

jurisdiction, this Court lacks jurisdiction and the claims against the Defendants must be dismissed with prejudice.

This Court lacks personal jurisdiction on the grounds of (i) insufficient process; and (ii) insufficient service of process. Defendants were not properly served the Summons and Amended Complaint in this matter pursuant to the requirements of Rule 4(e) and (h) of the Federal Rules of Civil Procedure. Accordingly, this Court is without personal jurisdiction and the claims and against the Defendants must be dismissed with prejudice.

The legal authority for the motion is contained in Defendants' supporting memorandum filed contemporaneously with this motion.

WHEREFORE, the Defendants' respectfully request that this honorable Court dismiss the claims against them with prejudice under Federal Rule 12(b)(1), (2), (4) and (5).

Dated this 4th day of October, 2012.

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Arrowchis*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of October, 2012, I electronically filed the foregoing **MOTION TO DISMISS THE AMENDED COMPLAINT UNDER FED. R. 12(b)(1), (2), (4) AND (5) BY DEFENDANTS TRIBAL COURT FOR THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION AND HONORABLE SMILEY ARROWCHIS**, with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all parties of record as follows:

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